



# **The Department of Defense Intelligence Oversight Program**



# Objectives

*After viewing this presentation, you should be able to:*

**Identify the key directives guiding intelligence oversight.**

**Describe the components involved in intelligence activities.**

**Identify the reporting procedures for questionable intelligence activities.**

**Describe the IO inspection methodology.**





# Agenda

1. Intelligence Oversight (IO): Why We Have It
2. The DoD IO Community
3. Policies and Regulations
4. Reporting Questionable Intelligence Activities and Significant or Highly Sensitive Matters
5. Essentials for Successful Programs
6. Resources and Summary







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# Intelligence Oversight: Why We Have It





# History of Intelligence Oversight



Click on the image to view the movie.





# History, cont.





# Purpose

Enable DoD intelligence personnel to carry out their legitimate functions effectively while protecting the constitutional rights and privacy of **U.S. Persons.**





# U.S. Person Defined

- U.S. citizens
- Lawful Permanent Residents (LPR)
- Certain unincorporated associations
- Corporations incorporated in the U.S.







# Background

## Executive Order 12333:

- Signed by President Reagan in 1981
- Validated by subsequent administrations
- Updated in 2008

### Executive Order 12333

#### United States Intelligence Activities

(As amended by Executive Orders 13284 (2003), 13355 (2004) and 13470 (2008))

##### PREAMBLE

Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence possible. For that purpose, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the National Security Act of 1947, as amended, (Act) and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

##### PART 1 Goals, Directions, Duties, and Responsibilities with Respect to United States Intelligence Efforts

1.1 Goals. The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) All means, consistent with applicable Federal law and this order, and with full consideration of the rights of United States persons, shall be used to obtain reliable intelligence information to protect the United States and its interests.

(b) The United States Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.

(c) Intelligence collection under this order should be guided by the need for information to respond to intelligence priorities set by the President.

(d) Special emphasis should be given to detecting and countering:

- (1) Espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests;
- (2) Threats to the United States and its interests from terrorism; and
- (3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.

(e) Special emphasis shall be given to the production of timely, accurate, and insightful reports, responsive to decisionmakers in the executive branch, that draw on all appropriate sources of information, including open source information, meet rigorous analytic standards, consider diverse analytic viewpoints, and accurately represent appropriate alternative views.

(f) State, local, and tribal governments are critical partners in securing and defending the United States from terrorism and other threats to the United States and its interests. Our national intelligence effort should take into account the responsibilities and requirements of State, local, and tribal governments and, as appropriate, private sector entities, when undertaking the collection and dissemination of information and intelligence to protect the United States.

(g) All departments and agencies have a responsibility to prepare and to provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance.

##### 1.2 The National Security Council.

(a) Purpose. The National Security Council (NSC) shall act as the highest ranking executive branch entity that provides support to the President for review of, guidance for, and direction to the conduct of all foreign intelligence,



# Intelligence Oversight in U.S.

- Congressional Oversight
- Other Government Agencies
- President's Intelligence Advisory Board and Intelligence Oversight Board







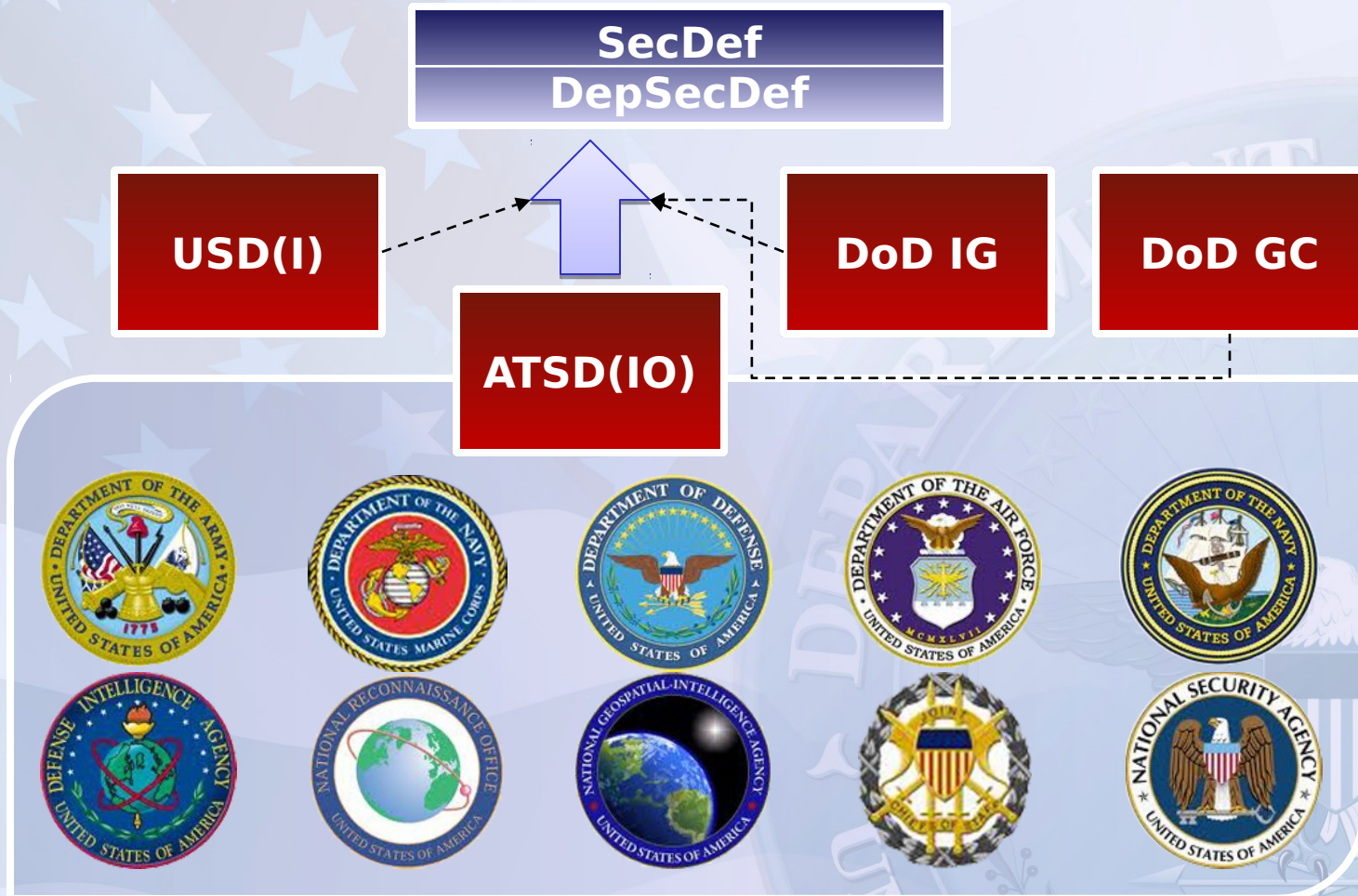
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# The DoD Intelligence Oversight Community





# The OSD IO Community







# Principal Clients

- OSD
  - USD (I)
- Joint Staff
- Services
  - U.S. Army
  - U.S. Navy and U.S. Marine Corps
  - U.S. Air Force





# Principal Clients, cont.

- The National Guard
  - Army National Guard
  - Air National Guard
- Agencies
  - National Security Agency
  - Defense Intelligence Agency
  - National Geospatial-Intelligence Agency
  - National Reconnaissance Office







# Principal Clients, cont.

- Combatant Commands (COCOMS)





# Shared Responsibility







# Roles and Responsibilities

## Directors or Commanders:

- Ensure an active program
- Designate appropriate officials
- Ensure appropriate training
- Provide protection from reprisal for reporting questionable activities
- Correct substantiated allegations





# Roles and Responsibilities, cont.

IGs conduct IO inspections to ensure:

- Employees understand rules and responsibilities
- Reporting procedures exist
- Intelligence activities comply with policies and regulations
- JAG/GC are consulted about legalities







# Roles and Responsibilities, cont.

JAGs and GCs are responsible for:

- Initial legal review of intelligence activities plans
- Continued monitoring of intelligence activities' legality





# Roles and Responsibilities, cont.

Intelligence personnel are the first line of defense.

They must:

- Know the standards and comply
- Report any:
  - Questionable intelligence activities
  - Significant or highly sensitive intelligence-related matters







# Roles and Responsibilities, cont.

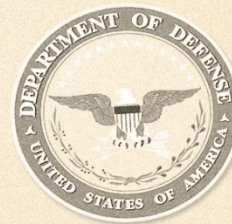
The ATSD(IO) conducts inspections at select locations and is responsible for:

- Monitoring inquiries
- Reviewing findings
- Informing and advising appropriate OSD officials
- Reporting to Executive Branch and Congress



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# Intelligence Oversight Policies and Regulations

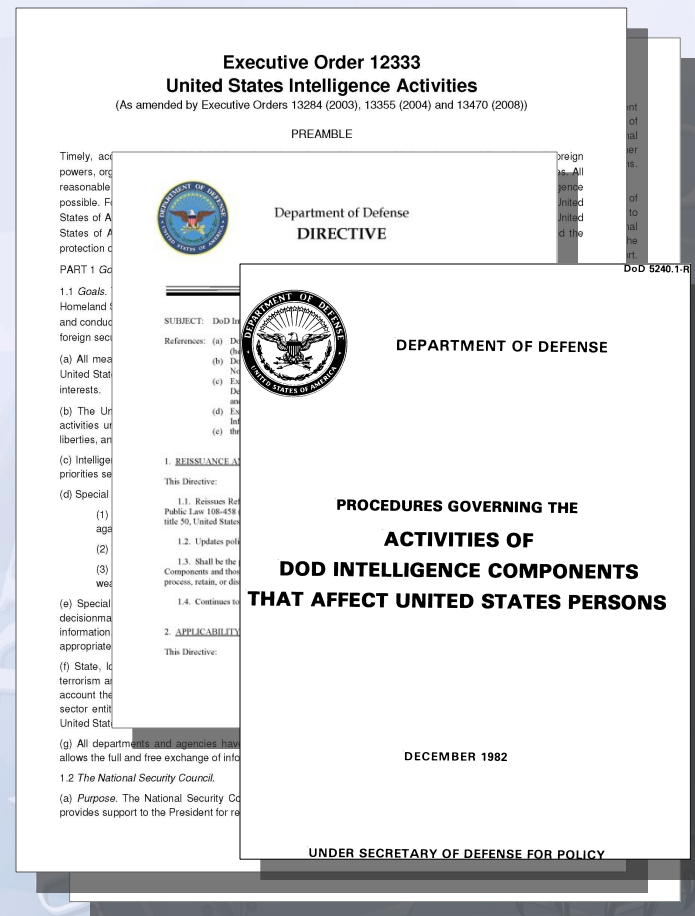






# Key Orders, Directives, and Regulations

- Executive Order 12333
- DoD Directive 5240.01
- DoD 5240.1-R
  - Supplemented by DTM 08-052





# DoD Baseline Documents: 5240.01 and 5240.1-R

- 5240.01
  - Establishes oversight policy
- 5240.1-R
  - Establishes the rules for conducting intelligence activities

Department of Defense  
**DIRECTIVE**

NUMBER 5240.01  
August 27, 2007  
USDO

SUBJECT: DoD Intelligence Activities

References: (a) DoD Directive 5240.1, "DoD Intelligence Activities," April 25, 1988 (hereby canceled)  
(b) DoD Directive 3143.01, "Under Secretary of Defense for Intelligence," November 23, 2005  
(c) Executive Order 12333, "United States Intelligence Activities," December 4, 1981, as amended by Executive Order 13284, January 23, 2003, and Executive Order 13355, August 27, 2004  
(d) Executive Order 13388, "Further Strengthening the Sharing of Terrorist Information to Protect Americans," October 23, 2005  
(e) through (k), see Enclosure 1

**1. REISSUANCE AND PURPOSE**

This Directive:

1.1. Reissues Reference (a) and implements References (b) through (k), Public Law 108-458 (Reference (c)), Executive Order 12863 (Reference (d)), and title 50, United States Code (Reference (g)).

1.2. Updates policy and provides direction for DoD intelligence activities.

1.3. Shall be the primary authority used as guidance by the components and those performing an intelligence or counterintelligence process, retain, or disseminate information concerning U.S. persons.

1.4. Continues to authorize the publication of DoD 5240.1-R.

**2. APPLICABILITY AND SCOPE**

This Directive:

**PROCEDURES GOVERNING THE  
ACTIVITIES OF  
DOD INTELLIGENCE COMPONENTS  
THAT AFFECT UNITED STATES PERSONS**

DECEMBER 1982

UNDER SECRETARY OF DEFENSE FOR POLICY

*William J. Perry* 10/4/82 *Richard Cheney* 12/7/82  
Attorney General of the United States Secretary of Defense





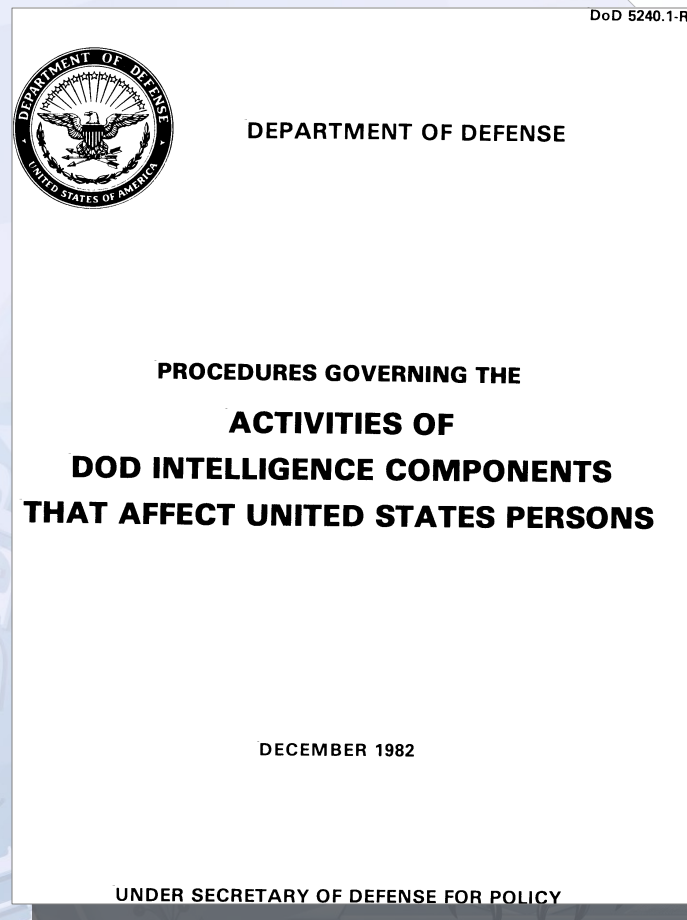
# Mission-Specific Policies and Regulations

- Joint Staff Regulations CJCSI 5901.01B
- Combatant Command Policies and Regulations
- Service and Agency Regulations
  - AR 381-10
  - SECNAV Instruction 3820.3E
  - SECNAV Instruction 5000.34
  - MCO 3800.2
  - Air Force Instruction 14-104
  - DIA Regulation 68-4
  - NGA Instruction NI 8900.4R5
  - NSA 1-23



# DoD 5240.1-R Procedures 1-4

1. Applicability
2. Collection
3. Retention
4. Dissemination







# Procedure 1: Applicability

- Establishes to whom regulations apply:
  - DoD Intelligence components
  - Any organization or person engaged in intelligence or intelligence-related activities
- Establishes to whom regulations DO NOT apply:
  - Law enforcement components
- Requires compliance with all applicable policies and procedures



# Procedure 2: Collection

Authorizes collection of information regarding U.S. persons only if:

- Necessary to conduct a function assigned to the collecting components
- Approved by authorized commander or director
- The nature of the collection falls within any of the 13 defined categories





# Procedure 2: Collection, cont.

1. Information obtained with consent
2. Publicly available information
3. Foreign intelligence
4. Counterintelligence
5. Potential sources of assistance to intelligence activities
6. Protection of intelligence sources and methods
7. Physical security



# Procedure 2: Collection, cont.

8. Personnel security
9. Communications security
10. Narcotics (international)
11. Threats to safety
12. Overhead reconnaissance
13. Administrative purposes





# Kinds of Information Collected Since 9/11

Most prevalent sources of information:

1. Information obtained with consent
2. Publicly available information
3. Foreign intelligence
4. Counterintelligence
7. Physical security
11. Threats to safety

**Require discernable  
foreign connection**



# Procedure 3: Retention

Authorizes retention of information regarding U.S. persons only if information was collected:

- Pursuant to Procedure 2
- Incidentally to an authorized collection
- For a temporary period not to exceed 90 days





# Procedure 4: Dissemination

Authorizes dissemination of information regarding U.S. persons without consent only if:

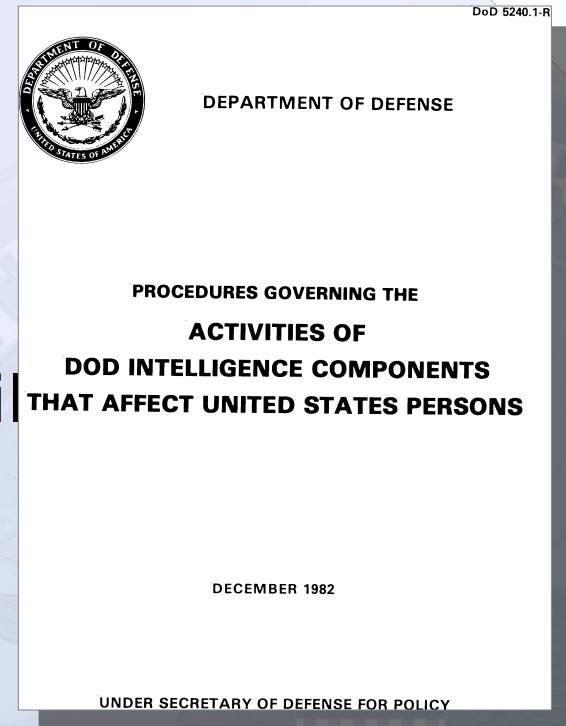
- Information was collected and retained under Procedures 2 and 3
- Recipient is reasonably believed to need such information and is a recognized party as defined by the procedure



# DoD 5240.1-R: Procedures 5-9

Intrusive collection techniques:

5. Electronic surveillance
6. Concealed monitoring
7. Physical searches
8. Searches and examination of mail
9. Physical surveillance







# DoD 5240.1-R: Procedures 10-13

- 10. Undisclosed participation in organizations
- 11. Contracting procedures
- 12. Assistance to law enforcement
- 13. Experimentation on human subjects



# DoD 5240.1-R: Procedures 14 and 15

## 14. Employee Conduct

- Employees shall conduct intelligence activities in accordance to EO 12333 and DoD 5240.1-R
- Leaders shall ensure adherence to the oversight policies and regulations

## 15. Reporting Questionable Activities

- Such activities must be identified, evaluated, and reported





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# Reporting Questionable Intelligence Activities (QIA) and Significant or Highly Sensitive Matters (S/HS)





# Who is Responsible?

- Commanders or Directors
- IGs
- JAGs and GCs
- Intelligence personnel
- ATSD(IO) and DoD GC







# Reportable Issues

- Questionable intelligence activities
- Significant or highly sensitive matters
- Crimes reported to the Attorney General
- Congressional testimony, notifications, reports, or briefings
  - Congressional committees
  - Individual members of Congress
  - Members of the Congressional staff



# Questionable Intelligence Activities Defined

A questionable intelligence activity is one that may violate a law, Executive Order, DoD policy or regulation, or a service, agency, or command policy or regulation.



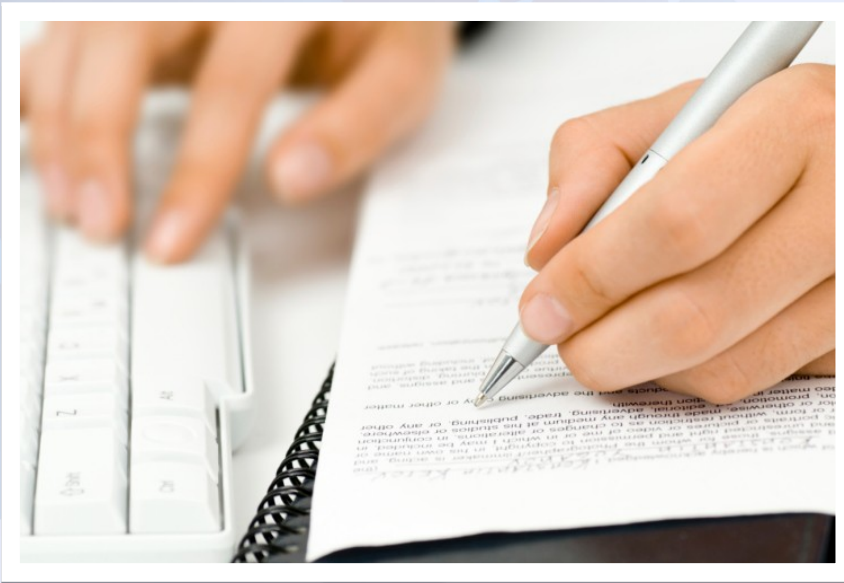


# Significant or Highly Sensitive Activity Defined

A significant or highly sensitive activity is one that can impugn the reputation or integrity of the DoD intelligence community and/or challenge the propriety of an intelligence activity.



# Reporting Format



The reporting format requires the following:

- ✓ Description of the incident
- ✓ Reference to policy, procedure, or regulation applicable to the activity
- ✓ Explanation of significant or highly sensitive incident
- ✓ Analysis of how or why incident occurred



# Reporting Format, cont.

- Assessment of effect on national security, international relations, civil liberties, and privacy rights
- Remedial action taken or planned
- Actions taken if incident involves improper handling or compromise of classified information





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# Essentials for Successful IO Programs





# Attributes of the Best IO Programs

In the past, the best IO programs:

- Directly involved leadership
- Tailored training programs
- Integrated planning
- Involved legal advisors
- Established procedures for reporting and resolving IO issues







# Kinds of Infractions

- Inadvertent non-compliance
  - ☑ Getting ahead of authorities
  - ☑ Lack of familiarity with regulations
  - ☑ Inappropriate open-source netsurfing
  - ☑ U.S. persons' data improperly included in reports
- Intentional non-compliance
  - ☑ Prisoner abuse by military intelligence personnel
  - ☑ Contract translator misconduct
  - ☑ Misuse of intelligence resources for personal gain





# 10 Inspections: Suggested Methodology

- Tailor the approach to the command
- Understand the command and control relationships
  - Review internal SOPs and policies
- Conduct organization and mission briefings
  - What are the ongoing or planned operations?
  - What supporting activities are ongoing or planned?
  - What controls are in place?
  - What oversight mechanisms are in place for compartmented programs?



# 10 Inspections: Suggested Methodology, cont.

- Interview senior leadership and all personnel involved in intelligence activities
- Examine pertinent documents and files
  - Hard copy files
  - Electronic files
  - Previous inspection reports and internal interviews
  - Training records
  - Product review
  - Records of reports and investigations under Procedure 15



# What resources does ATSD(IO) have?

Website:

<http://atsdio.defense.go>

ATSD(IO) Reference  
CD







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# Summary





# Review of Objectives

You should now be able to:

1. Identify the key directives guiding intelligence oversight
2. Describe the components involved in intelligence activities
3. Identify the reporting procedures for questionable intelligence activities
4. Describe the IO inspection methodology





# Four-Bullet Summation

Intelligence oversight is:

- The command, control, and supervision of intelligence activities
- The rules for governing the professional conduct of intelligence professionals
- A program to protect privacy and civil liberties
- A system of ethics and accountability





# ATSD(IO) Website



Visit us on the web!

<http://atsdio.defense.gov>



# Other Ways to Contact ATSD(IO)



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Or 703.697.1346



**Questions?**